U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: JACKSONVILLE, FL Date: JUL 16 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Jacksonville, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of St. Lucia who has resided in the United States since June 14, 1987, when she entered as a visitor for pleasure. She departed the United States in April 2005 and reentered the country with an advance parole document and was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with her husband.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer in Charge* dated March 29, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in failing to consider all of the evidence of hardship to the applicant's husband should she be denied admission to the United States. *Brief in Support of Appeal* at 1. Counsel further asserts that USCIS erred in denying the waiver application without specifically addressing the evidence presented. *Id.* Counsel additionally asserts that USCIS erred in finding that the adverse factors of her inadmissibility allowed for the waiver to be denied as a matter of discretion and failed to note that the applicant departed the United States and reentered with an advance parole document on the advice of USCIS. *Id.* In support of the waiver application and appeal, counsel submitted medical records for the applicant, affidavits from the applicant and her husband and sons, a psychological evaluation of the applicant's husband and sons, school records and awards for the applicant's sons, documentation related to the business owned by the applicant, a newspaper article and other documentation related to the volunteer and community activities of the applicant, and income tax returns for the applicant and her spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
>
> > (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
>
> (v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant

> who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a fifty year-old native and citizen of St. Lucia who has resided in the United States since June 14, 1987, when she entered as a visitor for pleasure. She departed the country in April 2005 and reentered on April 14, 2005 with an advance parole document. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for

having been unlawfully present in the United States from April 1, 1997, the date section 212(a)(9)(B)(i) of the Act entered into effect, until September 24, 2003, when she submitted an application for adjustment of status (Form I-485). The applicant married her husband, a fifty-four year-old native and citizen of the United States, on March 27, 2003. The applicant and her husband currently reside in Brooklyn, New York with her two sons.

Counsel for the applicant asserts that the applicant's husband would suffer extreme hardship if he relocated to St. Lucia with the applicant because he would have difficulty finding employment there due to his age, limited education, and status as a foreigner. *Brief* at 3. Counsel states, "The inability to properly provide for his family will exacerbate the severe anxiety and stress he already feels about his future prospects." *Id.* In support of this assertion counsel submitted a psychological evaluation of the applicant's husband that states that "the looming possibility of [redacted] deportation is clearly weighing heavily on him." *See Psychological Evaluation by* [redacted] further states that the applicant's husband feels he has no choice but to relocate to St. Lucia with the applicant if she is removed, and he would be forced to start his life all over in a foreign country with limited employment opportunities. He states, "These prospects have created severe anxiety for [redacted] that could lead to further depression and self destructive behavior." *Id.*

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted report is based on a psychological evaluation of the applicant's husband, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for depression or anxiety. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight that would result from an established relationship with the psychologist, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, there is no evidence submitted with the waiver application or appeal that [redacted] or any other mental health professional provided any follow-up treatment, despite the finding that the applicant's husband was suffering from anxiety.

Counsel also asserts that the applicant's husband would be unable to find employment in St. Lucia and further states that the applicant is under treatment related to recent surgery to remove uterine fibroids. Counsel states that "second class" medical facilities in foreign countries and medical hardship are factors that must be considered in evaluating extreme hardship, and further states, "Ms. medical needs will strain the family's financial resources, and if is unable to find work, will leave the family destitute." *Brief* at 4. The AAO notes that no information on economic conditions or access to medical care in St. Lucia was submitted to support counsel's assertions regarding medical and financial hardship in St. Lucia. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, although counsel submitted medical records concerning the applicant's history of uterine fibroids and the procedure to remove them in April 2007, these record consist of various physicians' notes, many of which are handwritten and illegible, laboratory results, and hospital records that contain medical terminology or abbreviations and were prepared for other medical professionals. The record does not contain specific evidence concerning the current medical

condition of the applicant, such as a detailed letter in plain language from her physician explaining the nature and long-term prognosis of any medical condition, any treatment and medication prescribed, or any family assistance needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition and the treatment and assistance needed.

The applicant's husband states that they are a very close knit family and he cannot imagine his life without the applicant. *See Affidavit of* [redacted] dated July 18, 2006. He further states, "The hardship our family would suffer if we were either separated or were forced to move to St. Lucia to stay together would be irreparable." *Id.* The record contains no further evidence concerning any potential hardship to the applicant's husband if he remains in the United States and the applicant is removed to St. Lucia. The evidence on the record does not establish that any emotional difficulties the applicant's husband would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by the prospect of being separated from his spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The emotional and financial hardship the applicant's husband would experience if the applicant is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.